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No. 71-131

In the Supreme Court of the United States

OCTOBER TERM, 1971

JAMES RAMOS
a/k/a JAMES RAYMOND,
Appellant,

v.

STATE OF LOUISIANA,
Appellee.

Appeal from the Supreme Court of Louisiana

MOTION TO DISMISS AN APPEAL FOR LACK OF JURISDICTION

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JACK E. YELVERTON,
Assistant Attorney General.

RONALD C. MARTIN,
District Attorney.

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May it please the Court:

I. OBJECT

The object of this motion is to dismiss appellant's appeal in this case as not being within the jurisdiction of the United States Supreme Court, for the following reasons: The appeal is not taken in conformity to 28 U.S.C. 1257 (2) or in conformity to Rules 12, 13, 14 and 15 of the United States Supreme Court. The appeal does not present a substantial federal question. The federal questions sought to be reviewed, though appellee continues to assert the non-existence of any substantial federal question, were neither timely nor properly raised, nor expressly passed on. The judg-

ment of the Louisiana court rests on an adequate non-federal basis. The reasons for appeal are fictitious and frivolous. The appeal requests a review by the United States Supreme Court on grounds so general and so vague as to constitute merely a request to second-guess the Louisiana court on the merits of the case and to make a reply by appellee on specific questions of federal constitutional law impossible. Finally, there being no good reason in law or facts of this appeal, allowance of appellant jurisdiction in this case would waste time, effort, and expense on an already overcrowded docket. Further, the object of this motion is to move that all costs of this appeal be assessed against appellant.

II. FACTS

The appeal is not within the jurisdiction of this court because it is not taken in conformity with 28 U.S.C. 1257 (2) which states,

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> * * * * * * * * * * * "

Appellant expressly relies on this statute as the sole basis for this appeal (See Appellant's Jurisdictional

Statement p.1). The only Louisiana statutes mentioned in a text of the State Supreme Court's opinion are Article 764 of the Louisiana Code of Criminal Procedure (quoted in the opinion and in Appellant's Jurisdictional Statement's Appendix, p. 8-9), Louisiana Revised Statutes Title 15, Section 434 (not quoted in either the opinion or in Appellant's Jurisdictional Statement), and Article 800 of the Louisiana Code of Criminal Procedure (quoted in the opinion but not in Appellant's Jurisdictional Statement, which makes no complaint concerning this statute). Louisiana Revised Statutes Title 15, Section 434 states,

> "Heresay evidence is inadmissible, except as otherwise provided in this Code."

The only statute even mentioned in the text of Appellant's Jurisdictional Statement is Article 764 of the Louisiana Code of Criminal Procedure. Nowhere was the validity of this or any other state statute mentioned in the opinion of the state court drawn in question as to being repugnant to the Constitution, treaties, or laws of the United States. Consequently, nowhere in the state court's opinion were any of these statutes decided valid as opposed to arguments that they were repugnant to the federal Constitution, treaties, or laws.

The appeal is not within the jurisdiction of this court because it was not taken in conformity with the rules of this court. It is hereby alleged appellant failed to comply with Supreme Court Rules 12, 13, 14 and 15 generally and specifically. Specifically, appellant failed to docket its case within 90 days after March

29, 1971, without obtaining an extension, in violation of Supreme Court Rule 13 (1) and/or failed to notify appellee, in violation of Supreme Court Rule 13 (3). Appellant failed to set out verbatim, cite the volume in page where may be found in the official edition, or even merely cite any state statute in his concise statement of the grounds on which the jurisdiction of this court is invoked, all in direct violation of Supreme Court Rule 15 (1) (b) (v). Nor does he cite therein any cases to sustain the jurisdiction, in violation of Supreme Court Rule 15 (1) (b) (iv). Most of all, appellant failed to mention in his concise statement of the case or anywhere else in Appellant's Jurisdictional Statement the stage and the proceedings in the court of first instance, and/or in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised, the method of raising them, the way in which they were passed upon by the court, or any reference to such rulings which might even hint that they were of the nature to bring the case within 28 U.S.C. 1257 (2), all in violation of Supreme Court Rule 15 (1) (d). Appellant failed to make a presentation why it is contended there are raised substantial federal questions so as to bring the case into the jurisdiction of this court for plenary consideration nor cites any cases to support such jurisdiction, in violation of Supreme Court Rule 15 (1) (e) and (f). Appellant did argue that the split decision indicated the substantiality of one of the questions before the state court; however, it was not presented that this question was a substantial *federal*

question. In fact, the justices of the state court were only concerned with which of several grounds certain evidence would be admitted. None of the justices were in the slightest disagreement as to any federal question.

Since nowhere in Appellant's Jurisdictional Statement does appellant cite and make presentations of federal questions, none were raised. Furthermore, as to his right to a speedy trial, no substantial question was raised when appellant was granted a trial within a period not prejudicial to him, a period not merely for the convenience of the state, a period about which he made no complaint in the first instance, a period during which appellant himself asked for a delay which was granted. Moreover, appellant neither mentions nor attacks any state statute in the text of Appellant's Jurisdictional Statement with respect to his complaint, and such a state statute is alleged to be his basis for appellate jurisdiction under 28 U.S.C. 1257 (2). None of the other questions raised a substantial federal question even on the surface of the complaint, since they were disposed of by the State Court's relying on general rules of law in existence throughout the tradition of common law and of this state. The disposition of these questions in this particular case could have been made, and were in fact made, on a fair legal basis not remotely involving any substantial federal questions.

For these reasons also, as is apparent from the

state court's opinion, the judgment of the state court rests on adequate nonfederal bases.

Since Appellant's Jurisdictional Statement fails to mention when, where, and how the federal questions, if any, were raised, the inference is that they were neither timely nor properly raised. A review of the full record reveals exactly that. None were certainly passed upon.

In reading the state court's opinion and then Appellant's Jurisdictional Statement, it becomes clear that the reasons for appeal are fictitious and frivolous and that appellant is merely pinning his hopes for a technical and arbitrary reversal of a conviction, made at a fair and impartial trial, on this court's taking jurisdiction of the case in full. In effect, appellant is merely requesting this court to second-guess the Louisiana Supreme Court on the merits of the case.

In fact, the so-called substantial federal questions appellant raised in Appellant's Jurisdictional Statement are so general and so vague that your appellee cannot reasonably ascertain what specific questions of constitutional and/or federal law it is required to answer under the facts of this case. For this and for all of the above reasons, the appeal in this case should be dismissed from the overcrowded docket of this court. There is no valid jurisdiction in this particular case for the court, appellant or appellee to spend time, effort, or expense.

III. CONCLUSION

Appellant alone has sought to bring this unwarranted appeal, and the appeal should be dismissed for lack of jurisdictional requirements, with all costs being assessed against appellant.

IT IS SO MOVED.

Respectfully submitted:

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JACK E. YELVERTON,
Assistant Attorney General.

RONALD C. MARTIN,
District Attorney.

By: _____
Jack E. Yelverton

CERTIFICATE

I hereby certify that a copy hereof has been mailed to opposing counsel on this _____ day of August, 1971.

_____

Jack E. Yelverton

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